

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3213) was agreed to.

#### DEVELOPMENTAL DISABILITIES AWARENESS MONTH

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of House Joint Resolution 741, a joint resolution pronouncing "Developmental Disabilities Awareness Month," which is now being held at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 741) to designate March 1987 as "Developmental Disabilities Awareness Month."

The Senate proceeded to consider the joint resolution.

Mr. STEVENS. Mr. President, I ask for adoption of the joint resolution.

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 741) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

#### NATIONAL YEAR OF THE TEACHER

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate turn to the consideration of House Joint Resolution 635, the "National Year of the Teacher."

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 635) to designate the school year of September 1986 through May 1987 as "National Year of the Teacher," and January 28, 1987, as "National Teacher Appreciation Day."

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 635) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

#### YEAR OF THE READER

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate now turn to the consideration of House Joint Resolution 671, designating the "Year of the Reader," which is being held at the desk.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 671) designated 1987 as "Year of the Reader".

The PRESIDING OFFICER. The question is on the third reading and passage of the joint resolution.

The joint resolution (H.J. Res. 671) was ordered to a third reading, was read the third time, and passed.

The preamble was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

#### FALSE CLAIMS AMENDMENTS ACT

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1562.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 1562) entitled "An Act to amend the False Claims Act, and title 18 of the United States Code regarding penalties for false claims, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

##### SECTION 1. SHORT TITLE.

*This Act may be cited as the "False Claims Amendments Act of 1986".*

##### SEC. 2. FALSE CLAIMS.

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) LIABILITY FOR CERTAIN ACTS.—Any person who—"

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the armed forces";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the armed forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, for an amount equal to consequential damages as set forth in subsection (b)(1) plus 2 times the amount of damages (other than such consequential damages) which the Government sustains because of the act of that person, and for the costs of a civil action brought to recover any such penalty or damages.

"(b) CALCULATION OF DAMAGES.—(1) For purposes of this section, consequential damages include damages which the United States would not have sustained but for—

"(A) the commission of any of the acts prohibited by subsection (a); or

"(B) entering into or making any contract or grant as a result, in any material part, of any false statement, record, or claim.

"(2) Any credits to which the defendant establishes entitlement may be deducted from the amount payable under subsection (a) only after the damages sustained by the United States have been doubled as set forth in subsection (a).

"(3) If any portion of the damages sustained by the United States under paragraph (1) is considered reasonably unforeseeable by the court, the court may reduce the total amount of damages payable under paragraph (1).

"(c) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information.

"(d) CLAIM DEFINED.—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954."

##### SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.

Section 3730 of title 31, United States Code, is amended to read as follows:

##### "§ 3730. Civil actions for false claims

"(a) RESPONSIBILITIES OF THE ATTORNEY GENERAL.—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section

3729, the Attorney General may bring a civil action under this section against the person.

"(b) ACTIONS BY PRIVATE PERSONS.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. Subject to paragraph (5), an action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Subject to paragraph (5), before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5)(A) If the court finds that an action brought by a person under this subsection—

"(i) is based on specific evidence or specific information which the Government disclosed as a basis for allegations made in a prior administrative, civil, or criminal proceeding; or

"(ii) is based on specific information disclosed during the course of a congressional investigation or based on specific public information disseminated by any news media, the court shall dismiss the action, unless subparagraph (B) applies.

"(B) The court shall not dismiss an action under subparagraph (A)—

"(i) if the Government proceeds with the action before the expiration of the 60-day period described in paragraph (2) or any extensions obtained under paragraph (3); or

"(ii) if the Government was aware of the evidence or information described in clause (i) or (ii) of subparagraph (A) for a period of at least 6 months before the person initiated the action, and the Government did not initiate a civil action on the matter involved within that 6-month period, or within such additional times as the court allows upon a showing of good cause.

"(C) The defendant must prove the facts warranting dismissal of a case to which this paragraph applies.

"(6) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) RIGHTS OF PARTIES TO QUI TAM ACTIONS.—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action. The person bringing the action shall have a right

to continue in the action with the same rights as those of a person permitted to intervene in an action under Rule 24(b) of the Federal Rules of Civil Procedure. The Government is not bound by an act of the person bringing the action. A motion by the Government to dismiss the action may not be granted unless the person bringing the action has been notified by the Government of the filing of the motion and unless the court has provided the person with the opportunity for a hearing on the motion.

"(2) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines after a hearing, including the opportunity for presentation of evidence, that the proposed settlement is fair, adequate, and reasonable under all the circumstances.

"(3) Upon a showing of the Government that certain actions of discovery by the person initiating the action would significantly interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(4) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action under this section, and the person bringing the action discloses relevant evidence, or relevant information, which the Government did not have at the time the action was brought, such person shall receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds, under subsection (b)(5)(A), to be based solely on evidence or information described in clause (i) or (ii) of that subsection, the court may award

such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the evidence or information and the role of a person in advancing the case to litigation. Any payment under this paragraph shall be made from the proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, vexatious, or brought solely for purposes of harassment.

"(e) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section."

#### SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(f) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer in whole or in part because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection."

#### SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10

years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or *nolo contendere*, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730."

**SEC. 6. FALSE CLAIMS JURISDICTION; CIVIL INVESTIGATIVE DEMANDS.**

(a) **IN GENERAL.**—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

**"§ 3732. False claims jurisdiction**

"(a) **ACTIONS UNDER SECTION 3730.**—Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) **CLAIMS UNDER STATE LAW.**—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

**"§ 3733. Civil investigative demands**

"(a) **IN GENERAL.**—

"(1) **ISSUANCE AND SERVICE.**—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying,

"(B) to answer in writing written interrogatories with respect to such documentary material or information,

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served.

"(2) **CONTENTS AND DEADLINES.**—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the al-

leged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced; and

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

Any such demand which is an express demand for any product of discovery shall not be returned or returnable until 20 days after the date on which a copy of such demand has been served upon the person from whom the discovery was obtained.

"(b) **PROTECTED MATERIAL OR INFORMATION.**—

"(1) **IN GENERAL.**—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) **EFFECT ON OTHER ORDERS, RULES, AND LAWS.**—Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparatory materials.

"(c) **SERVICE; JURISDICTION.**—

"(1) **BY WHOM SERVED.**—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) **SERVICE IN FOREIGN COUNTRIES.**—Any such demand or any petition filed under subsection (j) may be served upon any

person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

"(d) **SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.**—

"(1) **LEGAL ENTITIES.**—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) **NATURAL PERSONS.**—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering an executed copy of such demand or petition to the person; or

"(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) **PROOF OF SERVICE.**—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) **DOCUMENTARY MATERIAL.**—

"(1) **SWORN CERTIFICATES.**—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) **PRODUCTION OF MATERIALS.**—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section

shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person being examined, the person's counsel, the officer before whom the testimony is to be taken, and any other stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine

and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

"(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to

time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress.

"(D) Notwithstanding subparagraph (C), documentary material, answers to interrogatories, or transcripts of oral testimony obtained under a civil investigative demand issued under this section shall be disclosed to an agency of the United States if—

"(i) that agency files, in a district court of the United States in which petitions under subsection (j) may be filed, and serves upon the person named in the civil investigative demand and, in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, a petition requesting such disclosure;

"(ii) any person so served has an opportunity to be heard on the petition;

"(iii) the court finds that disclosure of the information involved is relevant to an investigation by the agency which it is authorized by law to conduct; and

"(iv) the court issues an order requiring such disclosure.

The provisions of paragraphs (5) and (6) of subsection (j) (relating to jurisdiction and applicability of the Federal Rules of Civil Procedure) apply to petitions under this subparagraph.

"(E) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

"(3) **USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.**—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) **CONDITIONS FOR RETURN OF MATERIAL.**—If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

"(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

"(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made by the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

"(5) **APPOINTMENT OF SUCCESSOR CUSTODIANS.**—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

"(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

"(B) transmit in writing to the person who produced such material, answers, or transcripts notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

"(j) **JUDICIAL PROCEEDINGS.**—

"(1) **PETITION FOR ENFORCEMENT.**—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such

person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

"(2) **PETITION TO MODIFY OR SET ASIDE DEMAND.**—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

"(3) **PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.**—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

"(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

"(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

"(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

"(4) **PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.**—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

"(5) **JURISDICTION.**—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

"(6) **APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.**—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

"(7) **DISCLOSURE EXEMPTION.**—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(k) **DEFINITIONS.**—For purposes of this section—

"(1) the term 'false claims law' means—

"(A) this section and sections 3729 through 3732; and

"(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

"(2) the term 'false claims law investigation' means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

"(3) the term 'false claims law investigator' means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

"(4) the term 'person' means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

"(5) the term 'documentary material' includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

"(6) the term 'custodian' means the custodian, or any deputy custodian, designated by the Attorney General under subsection (1)(1); and

"(7) the term 'product of discovery' includes—

"(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

"(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

"(C) any index or other manner of access to any item listed in subparagraph (A)."

(b) **CLERICAL AMENDMENT.**—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

"3732. False claims jurisdiction.

"3733. Civil investigative demands."

**SEC. 7. CRIMINAL PENALTIES.**

Section 287 of title 18, United States Code, is amended by striking "five" and inserting "ten".

Amend the title so as to read: "An Act to amend title 31, United States Code, with respect to the fraudulent use of public property or money."

**AMENDMENT NO. 3214**

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendment with an amendment which I send to the desk on behalf of Senator GRASSLEY of Iowa.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for Mr. GRASSLEY, proposes an amendment numbered 3214.

Mr. STEVENS. I ask unanimous consent the amendment not be read.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE**

This Act may be cited as the "False Claims Amendments Act of 1986".

**SEC. 2. FALSE CLAIMS**

Section 3729 of title 31, United States Code, is amended—

(1) by striking the matter preceding paragraph (1) and inserting the following:

"(a) **LIABILITY FOR CERTAIN ACTS.**—Any person who—

(2) in paragraph (1) by striking "Government or a member of an armed force" and inserting "United States Government or a member of the Armed Forces of the United States";

(3) in paragraph (2) by inserting "by the Government" after "approved";

(4) in paragraph (4)—

(A) by striking "public"; and

(B) by striking "in an armed force" and inserting "by the Government";

(5) in paragraph (5)—

(A) by striking "in an armed force" and inserting "by the Government"; and

(B) by striking "or" after the semicolon;

(6) in paragraph (6)—

(A) by striking "a member of an armed force" and inserting "an officer or employee of the Government, or a member of the Armed Forces,"; and

(B) by striking the period at the end of the paragraph and inserting "; or"; and

(7) by adding at the end of the subsection the following:

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement

to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

"(b) **KNOWING AND KNOWINGLY DEFINED.**—For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information—

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.

"(c) **CLAIM DEFINED.**—For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

"(d) **EXEMPTION FROM DISCLOSURE.**—Any information furnished pursuant to subparagraphs (A) and (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

"(e) **EXCLUSION.**—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1954."

**SEC. 3. CIVIL ACTIONS FOR FALSE CLAIMS.**

Section 3730 of title 31, United States Code, is amended to read as follows:

**"§ 3730. Civil actions for false claims**

"(a) **RESPONSIBILITIES OF THE ATTORNEY GENERAL.**—The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

"(b) **ACTIONS BY PRIVATE PERSONS.**—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

"(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

"(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

"(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

"(A) proceed with the action, in which case the action shall be conducted by the Government; or

"(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

"(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

"(c) **RIGHTS OF THE PARTIES TO QUI TAM ACTIONS.**—(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

"(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

"(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

"(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

"(i) limiting the number of witnesses the person may call;

"(ii) limiting the length of the testimony of such witnesses;

"(iii) limiting the person's cross-examination of witnesses; or

"(iv) otherwise limiting the participation by the person in the litigation.

"(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the

court may limit the participation by the person in the litigation.

"(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

"(4) Whether or not the Government proceeds with action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

"(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

"(d) AWARD TO QUI TAM PLAINTIFF.—(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and

costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

"(3) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

"(e) CERTAIN ACTIONS BARRED.—(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

"(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

"(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in section 201(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.)

"(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

"(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

"(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

"(f) GOVERNMENT NOT LIABLE FOR CERTAIN EXPENSES.—The Government is not liable for expenses which a person incurs in bringing an action under this section.

"(g) FEES AND EXPENSES TO PREVAILING DEFENDANT.—In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply."

SEC. 4. ENTITLEMENT TO RELIEF FOR DISCRIMINATION BY EMPLOYERS AGAINST EMPLOYEES WHO REPORT VIOLATIONS.

Section 3730 of title 31, United States Code, as amended by section 3 of this Act, is further amended by adding at the end the following new subsection:

"(h) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection."

#### SEC. 5. FALSE CLAIMS PROCEDURE.

Section 3731 of title 31, United States Code, is amended by striking subsection (b) and inserting the following:

"(b) A civil action under section 3730 may not be brought—

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

"(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

"(c) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

"(d) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730."

#### SEC. 6. FALSE CLAIMS JURISDICTION: CIVIL INVESTIGATIVE DEMANDS.

(a) IN GENERAL.—Subchapter III of chapter 37 of title 31, United States Code, is amended by adding at the end the following new sections:

##### "§ 3732. False claims jurisdiction

"(a) ACTIONS UNDER SECTION 3730.—Any action under section 3720 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

"(b) CLAIMS UNDER STATE LAW.—The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3720.

## "§ 3733. Civil investigative demands

## "(a) IN GENERAL.—

"(1) **ISSUANCE AND SERVICE.**—Whenever the Attorney General has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law, issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

"(A) to produce such documentary material for inspection and copying;

"(B) to answer in writing written interrogatories with respect to such documentary material or information;

"(C) to give oral testimony concerning such documentary material or information, or

"(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may not delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued for the date on which such copy was served.

"(2) **CONTENTS AND DEADLINES.**—

"(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

"(B) If such demand is for the production of documentary material, the demand shall—

"(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

"(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

"(iii) identify the false claims law investigator to whom such material shall be made available.

"(C) If such demand is for answers to written interrogatories, the demand shall—

"(i) set forth with specificity the written interrogatories to be answered;

"(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

"(iii) identify the false claims law investigator to whom such answers shall be submitted.

"(D) If such demand is for the giving of oral testimony, the demand shall—

"(i) prescribe a date, time, and place at which oral testimony shall be commenced;

"(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

"(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

"(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

"(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

"(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable under 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

"(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

"(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary. The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph.

"(b) **PROTECTED MATERIAL OR INFORMATION.**—

"(1) **IN GENERAL.**—A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

"(A) the standard applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

"(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

"(2) **EFFECT ON OTHER ORDERS, RULES, AND LAWS.**—Any such demand which is an express demand for any product of discovery supercedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

"(c) **SERVICE; JURISDICTION.**—

"(1) **BY WHOM SERVED.**—Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

"(2) **SERVICE IN FOREIGN COUNTRIES.**—Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court

would have if such person were personally within the jurisdiction of such court.

"(d) **SERVICE UPON LEGAL ENTITIES AND NATURAL PERSONS.**—

"(1) **LEGAL ENTITIES.**—Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

"(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

"(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

"(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

"(2) **NATURAL PERSONS.**—Service of any such demand or petition may be made upon any natural person by—

"(A) delivering and executed copy of such demand or petition to the person; or

"(B) depositing and executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

"(e) **PROOF OF SERVICE.**—A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

"(f) **DOCUMENTARY MATERIAL.**—

"(1) **SWORN CERTIFICATES.**—The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

"(A) in the case of a natural person, the person to whom the demand is directed, or

"(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

"(2) **PRODUCTION OF MATERIALS.**—Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe

in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

"(g) INTERROGATORIES.—Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

"(1) in the case of a natural person, the person to whom the demand is directed, or

"(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

"(h) ORAL EXAMINATIONS.—

"(1) PROCEDURES.—The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The Officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

"(2) PERSONS PRESENT.—The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

"(3) WHERE TESTIMONY TAKEN.—The oral testimony of any person taken pursuant to civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

"(4) TRANSCRIPT OF TESTIMONY.—When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes.

The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) CERTIFICATION AND DELIVERY TO CUSTODIAN.—The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

"(6) FURNISHING OR INSPECTION OF TRANSCRIPT BY WITNESS.—Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness's testimony.

"(7) CONDUCT OF ORAL TESTIMONY.—(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

"(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

"(8) WITNESS FEES AND ALLOWANCES.—Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

"(i) CUSTODIANS OF DOCUMENTS, ANSWERS, AND TRANSCRIPTS.—

"(1) DESIGNATION.—The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

"(2) RESPONSIBILITY FOR MATERIALS; DISCLOSURE.—(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such

material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

"(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice, who is authorized for such use under regulations which the Attorney General shall issue. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

"(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities. Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities.

"(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

"(i) documentary material and answer to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

"(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by the person to examine such transcripts.

"(3) USE OF MATERIAL, ANSWERS, OR TRANSCRIPTS IN OTHER PROCEEDINGS.—Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

"(4) CONDITIONS FOR RETURN OF MATERIAL.—If any documentary material has been produced by any person in the course of any

false claims law investigation pursuant to a civil investigative demand under this section, and—

“(A) any case or proceeding before any court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

“(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

“(5) APPOINTMENT OF SUCCESSOR CUSTODIANS.—In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

“(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

“(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

“(j) JUDICIAL PROCEEDINGS.—

“(1) PETITION FOR ENFORCEMENT.—Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

“(2) PETITION TO MODIFY OR SET ASIDE DEMAND.—(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

“(i) within 20 days after the date of service of the civil investigative demand, or at

any time before the return date specified in the demand, whichever date is earlier, or

“(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

“(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

“(3) PETITION TO MODIFY OR SET ASIDE DEMAND FOR PRODUCT OF DISCOVERY.—(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

“(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

“(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

“(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

“(4) PETITION TO REQUIRE PERFORMANCE BY CUSTODIAN OF DUTIES.—At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

“(5) JURISDICTION.—Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order en-

tered under this section to any court shall be punished as a contempt of the court.

“(6) APPLICABILITY OF FEDERAL RULES OF CIVIL PROCEDURE.—The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

“(k) DISCLOSURE EXEMPTION.—Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

“(1) DEFINITIONS.—For purposes of this section—

“(1) the term ‘false claims law’ means—

“(A) this section and sections 3729 through 3732; and

“(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

“(2) the term ‘false claims law investigation’ means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

“(3) the term ‘false claims law investigator’ means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

“(4) the term ‘person’ means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

“(5) the term ‘documentary material’ includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

“(6) the term ‘custodian’ means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1); and

“(7) the term ‘product of discovery’ includes—

“(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

“(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

“(C) any index or other manner of access to any item listed in subparagraph (A).”

(b) CLERICAL AMENDMENT.—The table of contents for chapter 37 of title 31, United States Code, is amended by adding after the item relating to section 3731 the following:

“3732. False claims jurisdiction.

“3733. Civil investigative demands.

SEC. 7. CRIMINAL PENALTIES.

Section 287 of title 18, United States Code, is amended by striking “fined” and all that follows through “both” and inserting “imprisoned not more than five years and shall

be subject to a fine in the amount provided in this title".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3214) was agreed to.

Mr. THURMOND. I would like to inquire of the principal sponsor of S. 1562, the distinguished Senator from Iowa, Senator GRASSLEY, what role is contemplated for the qui tam relator when the Government chooses to proceed in a fraud action in an administrative setting? It is my understanding that S. 1562 has limited the role that the qui tam will play in an administrative proceeding? Is this the understanding of the principal sponsor?

Mr. GRASSLEY. The distinguished chairman of the Judiciary Committee is correct. In the event the Government chooses to proceed administratively, the qui tam relator retains the same rights available in the judicial action. Although the Senate compromised with the House concerning the qui tam relator's participation, both Houses of Congress clearly contemplated allowing for limitations on the qui tam's participation in judicial and administrative actions. The Senate and House agreed upon language which set out the limitations that a court could impose on a qui tam in civil actions when active participation by the qui tam could harm the proceeding.

Upon a showing by the Government that unrestricted participation during either an administrative or judicial proceeding of a qui tam would interfere with or unduly delay the action, the court may, in its discretion, impose limitations on the qui tam's participation. Upon a showing by the defendant that the action would be for purposes of harassment or would cause undue burden or unnecessary expense, the court may similarly limit the qui tam's participation. Additionally, an administrative law judge has great discretion in an administrative proceeding to consider the cause of action in an expeditious fashion, and the legislation contemplates that administrative proceedings should be conducted with a minimum of undue delay or interference by qui tam relators.

Mr. THURMOND. I thank the distinguished Senator from Iowa.

Mr. HATCH. At this time I wish to commend the Senator from Iowa for his fine work in forwarding this important legislation and the Chairman of the Judiciary Committee, the Senator from South Carolina, for his role in working with Senator GRASSLEY and me in molding a fair and effective resolution of the issues involved with fraud against the Government. We are also grateful to the Members of the House of Representatives who participated in making this legislation possible. It is vitally important that we do something about the waste and lawlessness that fraud against our Government promotes. This bill substan-

tially strengthens the tools to fight fraud but retains due process and fairness as to the accused.

I would like to point out that in providing fairness, the final bill gives the court flexibility in imposing damages and forfeiture. When there are mitigating circumstances present in the case, the court may impose a lesser forfeiture since a range of \$5,000 to \$10,000 per violation is provided in imposition of penalty or forfeiture upon a finding of fraud. Is this your understanding?

Mr. GRASSLEY. Yes, I agree with that statement. Therefore, if a small business has been found liable under the act, the court may consider the burden of the forfeiture to the business and impose a penalty on the lower end of the range. Similarly, a procedure is established for corporations to come forward when they discover fraud within their midst. When corporations follow these procedures in cooperating with the Government, the court may impose not only the lesser level of damages, but also a lesser level of penalty.

The motion was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider that action.

Mr. BYRD. Mr. President, I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

#### INSPECTION OF ASBESTOS

Mr. STEVENS. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 5073.

The assistant legislative clerk laid before the Senate the amendment of the House of Representatives to the bill (H.R. 5073) to amend the Toxic Substances Control Act to require the Environmental Protection Agency to promulgate regulations requiring inspection for asbestos-containing material in the Nation's schools, development of asbestos management plans for such schools, response actions with respect to friable asbestos-containing material in such schools, and for other purposes."

(The amendment of the House is printed in the RECORD of October 1, 1986, beginning at page H8816.

Mr. STAFFORD. Mr. President, the bill before the Senate at this time is one of the most important public health measures that we have considered. It is aimed at reducing the risk of asbestos-related disease for an estimated 15 million schoolchildren and 1.4 million school employees.

Asbestos is a deadly substance. An Assistant Administrator of the Environmental Protection Agency testified before the Committee on Environment and Public Works that it is one of the four or five most hazardous substances being regulated by the Agency. The American Cancer Society, reflecting prevailing scientific opinion, testified that there is no known safe level of as-

bestos exposure and that efforts should be made to avoid even low-level exposure. Other expert witnesses testified that children are especially at risk because of their high breathing rates, their growing lungs and other factors.

This bill enjoys the support of a wide variety of educational, public health, and governmental organizations. These include the Service Employees International Union of the AFL-CIO, the National Parent Teachers Association, the National Education Association, the American Federation of Teachers, the National Governor's Association, the National Association of Counties, and a host of others.

Mr. President, some of these groups have been active for some time in the struggle to protect schoolchildren and employees from asbestos exposure. In 1984, the Service Employees International Union [SEIU] brought suit against EPA to compel the agency to issue comprehensive regulations dealing with the asbestos problems in the Nation's schools. Information reviewed and developed during the lawsuit, *SEIU v. EPA*, No. 84-2790 (D.D.C.), demonstrated the inadequacies of the EPA's asbestos program and the need for legislation requiring the agency to issue adequate and appropriate regulations regarding asbestos in schools. This legislation provides the same relief sought in the lawsuit.

In our deliberations on both the need for and the scope of this legislation we have been assisted by several groups which have provided valuable information on the dangers posed by asbestos in the Nation's schools, and the types of regulations which are required to address those dangers. Specifically, I would note the contributions of the Service Employees International Union, the National Educational Association, the National Parent-Teacher Association, the American Federation of Teachers, and the National School Boards Association. SEIU was particularly helpful in that information which it obtained in its lawsuit against EPA to compel the Agency to issue asbestos regulations demonstrated the inadequacies of the EPA Asbestos Program, and the need for legislation obligating EPA to take appropriate regulatory action.

Mr. President, with the active support of these groups, similar versions of the present bill passed through the entire legislative process in both Houses of Congress without receiving a single dissenting vote. That is a remarkable achievement and it bespeaks plainly the priority that Congress places on this important issue.

Mr. President, I want to note that we have reached agreement between the two Houses of Congress without the need for a formal conference committee. We achieved this by informally negotiating with the authors of the House bill a substitute bill incorporating features of S. 2083 and H.R. 5073.